

FRAP 33. Appeal Conferences

The court may direct the attorneys — and, when appropriate, the parties — to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

(As amended Apr. 29, 1994; eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998.)

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11th Cir. R. 33-1 Kinnard Mediation Center.

(a) Filing Civil Appeal Statement.

A Civil Appeal Statement is required in all civil appeals, except as provided in section (a)(3) below.

(1) Civil appeals from United States district courts. When notice of the filing of a notice of appeal is served pursuant to FRAP 3(d), the clerk of the district court shall notify the appellant(s) (and cross-appellant(s)) that a Civil Appeal Statement form is available as provided in section (a)(4) below. The appellant(s) (and cross-appellant(s)) shall file with the clerk of the court of appeals, with service on all other parties, an original and one copy of a completed Civil Appeal Statement within 10 days after filing the notice of appeal in the district court. The completed Civil Appeal Statement shall set forth information necessary for an understanding of the nature of the appeal and shall be accompanied by the portion of the district court record described in 11th Cir. R. 33-1(b)(1). Any appellee may file an original and one copy of a response with the court of appeals within seven days of the receipt of the completed Civil Appeal Statement and shall serve a copy of the response on all other parties.

(2) Review of administrative agency orders and appeals from the United States Tax Court. When the clerk of the court of appeals notifies the parties that an appeal or petition has been docketed, the clerk shall also notify the appellant(s)/petitioner(s) (and cross-appellant(s)/cross-petitioner(s)) that a Civil Appeal Statement form is available as provided in section (a)(4) below. The appellant(s)/petitioner(s) (and cross-appellant(s)/cross-petitioner(s)) shall file with the clerk of the court of appeals, with service on all other parties, an original and one copy of a completed Civil Appeal Statement within 10 days from the date the notice was transmitted by the clerk of the court of appeals. The completed Civil Appeal Statement shall set forth information necessary for an understanding of the nature of the appeal or petition and shall be accompanied by the portion of the record described in 11th Cir. R. 33-1(b). Any appellee/respondent may file an original and one copy of a response with the court of appeals within seven days of the receipt of the completed Civil Appeal Statement and shall serve a copy of the response on all other parties.

(3) A Civil Appeal Statement is not required to be filed in (1) appeals or petitions in which the appellant/petitioner (or cross-appellant/cross-petitioner) is proceeding without the assistance of counsel or in which the appellant/petitioner (or cross-appellant/cross-petitioner) is incarcerated; (2) appeals from habeas corpus actions filed under 28 U.S.C. §§ 2241, 2254, and 2255; and (3) immigration appeals.

(4) Availability of Civil Appeal Statement forms. The Civil Appeal Statement form is available on the Internet at www.ca11.uscourts.gov. Copies may also be obtained from the clerk of the court of appeals and from the clerk of each district court within the Eleventh Circuit.

(b) Portions of Record to Accompany Completed Civil Appeal Statement.

(1) Civil appeals from United States district courts and the United States Tax Court. The appellant shall file with each completed Civil Appeal Statement the following portions of the district court or tax court record:

- (i) the judgment or order appealed from;
- (ii) any other order or orders sought to be reviewed, including, in bankruptcy appeals, the order(s) of the bankruptcy court appealed to the district court;
- (iii) any supporting opinion, findings of fact, and conclusions of law filed by the court;
- (iv) the magistrate judge's report and recommendation, when appealing a court order adopting same in whole or in part; and
- (v) findings and conclusions of an administrative law judge, when appealing a court order reviewing an administrative agency determination involving same.

(2) Review of administrative agency orders. The petitioner shall file with each completed Civil Appeal Statement the following portions of the agency record:

- (i) the agency docket sheet, or index of documents comprising the record, if one exists;
- (ii) any order or orders sought to be reviewed; and
- (iii) any supporting opinion, findings of fact, and conclusions of law filed by the agency, board, commission, or officer.

(c) Mediation.

(1) An active or senior judge of the court of appeals, a panel of judges (either before or after oral argument), or the Kinnard Mediation Center, by appointment of the court, may direct counsel and parties in an appeal to participate in mediation conducted by the court's circuit mediators. Mediations are official court proceedings and the Kinnard Mediation Center circuit mediators act on behalf of the court. Counsel for any party may request mediation in an appeal in which a Civil

Appeal Statement is required to be filed if he or she thinks it would be helpful. Such requests will not be disclosed by the Kinnard Mediation Center to opposing counsel without permission of the requesting party. The purposes of the mediation are to explore the possibility of settlement of the dispute, to prevent unnecessary motions or delay by attempting to resolve any procedural problems in the appeal, and to identify and clarify issues presented in the appeal. Mediation sessions are held in person or by telephone. Counsel must, except as waived by the mediator in advance of the mediation date, have the party available during the mediation. Should waiver of party availability be granted by the mediator, counsel must have the authority to respond to settlement proposals consistent with the party's interests. The mediator may require the physical presence of the party at an in-person mediation or the telephone participation of the party in a telephone mediation. For a governmental or other entity for which settlement decisions must be made collectively, the availability, presence, or participation requirement may be satisfied by a representative authorized to negotiate on behalf of that entity and to make recommendations to it concerning settlement.

(2) A judge who participates in the mediation or becomes involved in the settlement discussions pursuant to this rule will not sit on a judicial panel that deals with that appeal.

(3) Communications made during the mediation and any subsequent communications related thereto shall be confidential. Such communications shall not be disclosed by any party or participant in the mediation in motions, briefs, or argument to the Eleventh Circuit Court of Appeals or to any court or adjudicative body that might address the appeal's merits, except as necessary for enforcement of Rule 33-1 under paragraph (f)(2), nor shall such communications be disclosed to anyone not involved in the mediation or otherwise not entitled to be kept informed about the mediation by reason of a position or relationship with a party unless the written consent of each mediation participant is obtained. Counsel's motions, briefs, or argument to the court shall not contain any reference to the Kinnard Mediation Center.

(d) Confidential Mediation Statement. The court requires, except as waived by the circuit mediator, that counsel in appeals selected for mediation send a confidential mediation statement assessing the appeal to the Kinnard Mediation Center before the mediation. The Kinnard Mediation Center will not share the confidential mediation statement with the other side, and it will not become part of the court file.

(e) Filing Deadlines. The filing of a Civil Appeal Statement or the scheduling of mediation does not extend the time for ordering any necessary transcript (pursuant to 11th Cir. R. 10-1) or for filing briefs (pursuant to 11th Cir. R. 31-1). Such time may be extended by a circuit mediator to comply with these rules if there is a substantial probability the appeal will settle and the extension will prevent the unnecessary expenditure of time and resources by counsel, the parties, and the court.

(f) Noncompliance Sanctions.

(1) If the appellant or petitioner has not taken the action specified in paragraph (a) of this rule within the time specified, the appeal or petition may be dismissed by the clerk of the court of appeals after appropriate notice pursuant to 11th Cir. R. 42-1.

(2) Upon failure of a party or attorney to comply with the provisions of this rule or the provisions of the court's notice of mediation, the court may assess reasonable expenses caused by the failure, including attorney's fees; assess all or a portion of the appellate costs; dismiss the appeal; or take such other appropriate action as the circumstances may warrant.

(g) Use of Private Mediators.

(1) Upon agreement of all parties, a private mediator may be employed by the parties, at their expense, to mediate an appeal that has been selected for mediation by the Kinnard Mediation Center.

(2) Such private mediator (i) shall have been certified or registered as a mediator by either the State of Alabama, Florida, or Georgia for the preceding five years; (ii) shall have been admitted to practice law in either the State of Alabama, Florida, or Georgia for the preceding fifteen years and be currently in good standing; and (iii) shall be currently admitted to the bar of this court.

(3) All persons while employed as private mediators shall follow the private mediator procedures as set forth by the Kinnard Mediation Center.

(4) The provisions of this subsection (g) shall be in effect until discontinued by the Chief Circuit Mediator or by the court.